

BEFORE THE DEPARTMENT OF PUBLIC
HEALTH AND HUMAN SERVICES OF THE
STATE OF MONTANA

In the matter of the amendment of ARM)	NOTICE OF PUBLIC
37.80.101, 37.80.201, 37.80.205,)	HEARING ON PROPOSED
37.80.206, and the repeal of ARM)	AMENDMENT AND REPEAL
37.80.601, 37.80.602, 37.80.603, and)	
37.80.604 pertaining to the child care)	
assistance program)	

TO: All Interested Persons

1. On December 4, 2007, at 2:30 p.m., the Department of Public Health and Human Services will hold a public hearing in the Board of Investments Conference Room, 2401 Colonial Drive, Helena, Montana, to consider the proposed amendment and repeal of the above-stated rules.

2. The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process (including reasonable accommodations at the hearing site) or who need an alternative accessible format of this notice. If you need an accommodation, contact the department no later than 5:00 p.m. on November 26, 2007. Please contact Gwen Knight, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 202951, Helena MT 59620-2951; telephone (406)444-9503; fax (406)444-9744; e-mail dphhslegal@mt.gov.

3. The rules as proposed to be amended provide as follows. New matter is underlined. Matter to be deleted is interlined.

37.80.101 PURPOSE AND GENERAL LIMITATIONS (1) This chapter pertains to payment for child care services provided to parents eligible for benefits funded under section 5082 of the Omnibus Reconciliation Act of 1990, Public Law 101-508, entitled "Child Care and Development Block Grant Act of 1990", as amended in 1996, and the "Personal Responsibility and Work Opportunity Reconciliation Act"; of 1996. These rules also pertain to subsequent refunding of this program. In addition, this chapter's requirements for certification of legally unregistered providers under ARM 37.80.306 apply to all child care programs administered by the department where the department allows participation of legally unregistered providers.

(2) through (13)(a) remain the same.

(b) the Montana Child Care Manual in effect on ~~May 1, 2006~~ September 1, 2007. The Montana Child Care Manual, dated ~~May 1, 2006~~ September 1, 2007, is adopted and incorporated by this reference. The manual contains the policies and procedures utilized in the implementation of the department's Child Care Assistance program. A copy of the Montana Child Care Manual is available at each child care resource and referral agency; at the Department of Public Health and Human

Services, Human and Community Services Division, 111 N. Jackson St., P.O. Box 202925, Helena, MT 59620-2925; and on the department's web site at www.dphhs.mt.gov www.childcare.mt.gov.

AUTH: 52-2-704, 53-4-212, MCA

IMP: 52-2-702, 52-2-704, 52-2-713, 52-2-731, 53-2-201, 53-4-211, 53-4-601, 53-4-611, 53-4-612, MCA

37.80.201 NONFINANCIAL REQUIREMENTS FOR ELIGIBILITY AND PRIORITY FOR ASSISTANCE (1) through (3)(e) remain the same.

(4) If a birth or adoptive parent of a child does not live with the child and is not paying child support under a child support order recognized by a Montana district court, the custodial parent must apply for and cooperate with Child Support Enforcement Services from the department's Child Support Enforcement Division. The department determines cooperation with Child Support Enforcement Division by maintaining an open case when a case can be established or by the parent providing all appropriate requested documentation to Child Support Enforcement Division for them to open a child support case. A custodial parent who fails without good cause to apply for such services and to cooperate with the Child Support Enforcement Division will be decertified for benefits under this chapter as of the date of such failure. Good cause is defined as specified in ARM 37.78.215.

(5) through (10)(b) remain the same.

(11) Any licensed or registered child care provider is not eligible for child care assistance while a child attends a public or private school, including kindergarten in any circumstance. The department will not pay for care while a child who is of legal school age attends a private or public school or kindergarten. The department will not pay for a child to be home schooled.

AUTH: 52-2-704, 53-4-212, MCA

IMP: 52-2-704, 52-2-713, 52-2-721, 52-2-722, 52-2-723, 52-2-731, 53-2-201, 53-4-211, 53-4-601, 53-4-611, MCA

37.80.205 CHILD CARE RATES: PAYMENT REQUIREMENTS

(1) through (5) remain the same.

(6) The rate charged by a child care provider for children whose child care is paid for by the department cannot exceed the rate charged to private pay parents for the same service, ~~with the following exceptions for quality child care providers:~~

~~(a) Providers who qualify for a one star quality child care rating will receive 110% of the respective rate and providers who qualify for a two star rating will receive 115% of the respective rate. The criteria to qualify for quality incentive adjustments are set forth in section 7-1 of the Child Care Manual.~~

(7) and (8) remain the same.

AUTH: 52-2-704, 53-4-212, MCA

IMP: 52-2-704, 52-2-713, MCA

37.80.206 CERTIFIED ENROLLMENT (1) through (3)(c) remain the same.

(4) Child care facilities must notify the child care resource and referral agency when a child is absent without explanation for five consecutive working days. If the provider fails to notify the child care resource and referral agency when a child is absent without explanation for five consecutive working days, the department is not required to pay for any care from the date the child last attended the facility.

AUTH: 52-2-704, MCA

IMP: 52-2-704, MCA

4. The rules as proposed to be repealed provide as follows:

37.80.601 BEST BEGINNINGS QUALITY CHILD CARE MINI GRANTS
found at ARM page 37-17935.

AUTH: 52-2-704, 53-2-201, 53-4-212, MCA

IMP: 52-2-704, MCA

37.80.602 BEST BEGINNINGS QUALITY CHILD CARE MERIT PAY found
at ARM page 37-17936.

AUTH: 52-2-704, 53-2-111, MCA

IMP: 52-2-704, 52-2-111, 52-2-112, 52-2-711, MCA

37.80.603 INFANT/TODDLER CARE GIVER CERTIFICATION found at
ARM page 37-17941.

AUTH: 52-2-111, 52-2-704, 53-2-201, MCA

IMP: 52-2-704, MCA

37.80.604 REQUIREMENTS FOR CHILD CARE FACILITY PARTICIPATION
IN THE BEST BEGINNINGS STAR QUALITY TIERED REIMBURSEMENT
PROGRAM found at ARM page 37-17942.

AUTH: 52-2-704, 53-4-212, MCA

IMP: 52-2-704, 52-2-721, 53-4-212, MCA

5. ARM 37.80.101(13) The department has found it necessary to revise sections 1-2, 1-3, 1-4, 1-5, 2-1, 2-2, 2-5, 3-1, 4-1, 6-2, 6-5, 6-6, 6-7, 6-10, 6-13, 7-5b, and 7-5c of the Montana Child Care Manual. The Montana Child Care Manual was incorporated into rule on July 1, 2005. The department has found it necessary to add sections 3-3 and 4-2 to the Montana Child Care Manual.

Section 1-2 is updated to include the most recent Human and Community Services organizational chart. No fiscal impact is associated with this change.

Section 1-3, relating to Definitions, is updated to include the following definitions for Improper Payment and for In-Compliance with Child Support:

- Improper Payment - An improper payment is a payment requested or made to a parent or provider in error.
- In-Compliance with Child Support - The parent has an open case and maintains an open case while receiving a Best Beginnings Child Care Scholarship with the Montana Child Support Enforcement Division or has complied with all requests by CSED to open a case, the parent is receiving child support through a district court order, or the parent must have appropriate reasons and documentation to apply for Good Cause not to pursue child support as outlined in the Child Care Policy Manual Section 2-2.

The addition of these definitions will clarify the department's use of these terms with parents and providers. No fiscal impact is associated with this change.

Section 1-4 is titled Provider Rates. The department completed a Market Rate Survey in June 2007 and has updated scholarship reimbursement rates to be at the 75th percentile of the current 2007 market. The department has determined that it is necessary to update the provider reimbursement rates to ensure families in poverty have the ability to access public funding used to subsidize child care assistance. The reimbursement rates have shown an increase in eleven of the twelve areas, and have shown a decrease in one area. The Market Rate is projected to increase by 6.8% or an estimated \$1.3 million in SFY 2008 in expense to the federal Child Care and Development Fund (CCDF). A decrease in the hourly infant rate for centers in the Miles City area has occurred. The hourly infant rate for centers has decreased by \$.10 per hour. This may impact payments for an estimated 21 infants in any of the five center facilities. The number of children estimated to be effected was determined by the Miles City unduplicated case load used in the funding formula extended with 1.67 children per family average. In Section 1-4, page 7 of 8, the title State in the last row of the table should be changed to Out-of-State. There is no calculated fiscal impact associated with this rule change.

Section 1-5, related to the Child Care Sliding Fee Scale is updated to reflect the 2007 Federal Poverty Guidelines to ensure families in poverty are able to access public funding used in order to subsidize child care assistance. The fiscal impact is \$418,911 annually with 3.2% increase in the 150% level of poverty. These changes impact families in two ways. First, a family's co-pay is decreased, which increases by \$137,851 the total care by CCDF. Second, actual case load cost will increase by \$281,059.

Section 2-1, related to the Application Process families follow to receive child care subsidies, is amended to require parents to verify the hours billed for the preceding month are accurate, and requires parents to verify the accuracy of their provider's billing by reviewing and signing their Explanation of Benefit. The parent has a right to a timely recertification process. The department, however, has determined the current process is too cumbersome to fulfill that right, and is ineffective. The department believes the changes to section 2-1 remedy these issues. There is no calculated fiscal impact associated with this rule change.

Section 2-2, related to Household Requirements, is updated to clarify that parents

are responsible for reporting any changes to their child support case to the Child Care Resource and Referral agency (CCR&R), including opening and closing of child support cases. This section is also changed so as not to require parents under the age of 18 to apply for child support through the Montana Child Support Enforcement Division until they reach the age of 18. No fiscal impact is associated with these changes.

Section 2-5, related to Prospective Budgeting, is changed by removing the reference currently found on page 10 of 11 to factoring "ongoing income received weekly or bi-weekly...unless it meets the exception on page eight" because no such exception is found on page 8 of that section of the manual. No fiscal impact is associated with this change.

Section 2-6, related to Income Table, is changed to add a section disregarding from income any child support paid out of a home as countable income towards the family's total gross income for eligibility for child care assistance. The parent cannot access funds the parent is paying for child support to another household, and must verify the payment of such child support for each month, and must also verify there are no arrearages. The department anticipates these changes will likely cost approximately \$120,000 per year based on approximately three-hundredths of 1% of the current budget because more families will likely be eligible for child care assistance.

Section 3-1, related to Office of Public Assistance (OPA), WoRC and CCR&R Coordination, is changed to clarify the process the CCR&R Eligibility Worker is to use when TANF cash benefits cannot be verified in The Economic Assistance Management System (TEAMS). In such cases, the CCR&R Eligibility Worker must enter \$1.00 for TANF cash benefits on the Child Care Under Big Sky (CCUBS) person screen, enter \$1.00 for Food Stamps benefits, and enter \$1.00 for housing or rent benefits. By entering a dollar amount in these lines on the CCUBS person screen, the CCR&R Eligibility Worker is able to process the TANF referral for child care assistance in a more timely manner. The section is also changed to allow child care to begin for 30 days before TANF Cash Assistance has been authorized. This can be referred to a 30-day presumptive eligibility period for TANF participants, since the WoRC Case Manager believes that the family will qualify for TANF Cash Assistance. If TANF Cash Assistance is not authorized, then the family's child care case will be closed after the initial 30-day period. No fiscal impact is associated with this change.

The department has determined that it is necessary to add a new section, 3-3, to the Child Care Policy Manual related to Working Caretaker Relative Child Care. The Working Caretaker Relative Child Care Program was authorized in House Bill 2 of the 2007 Montana State Legislature and is funded by TANF. This program allows a working caretaker relative who is receiving a child only TANF cash benefit to receive child care assistance while working and receiving their TANF cash benefit. The working caretaker relative must be working 60 hours per month if a single adult household, and 120 hours per month if a two adult household. The child will receive

authorization for child care for six months at a time, after which the caretaker relative's work requirement must be reverified before further child care is authorized. The fiscal impact is projected at \$683,784 to the TANF Child Only Program.

Section 4-1, related to CFSD & CCR&R Coordination, is revised to clarify the process used for setting up child care authorizations between CFSD social workers and the CCR&R eligibility workers. The department has found it necessary to revise all of Section 4-1. The Human and Community Services Division have developed a coordinated effort with the Child and Family Services Division for all of Child Protective Services (CPS) child care to be paid using the CCUBS system. Previously, the child care case would be transferred every twelve months between the two department's computer systems. Now, the CPS child care cases will remain in the Human and Community Services CCUBS computer system. This process will ensure child care providers only have to receive their payments off of one system and that each child will be afforded the same policies between CPS, TANF and non-TANF types of cases. The fiscal impact is zero to the public as all children will be served. The funding is now funneled through a single system.

The department has been requested to cooperate to provide serving Tribal IV-E children and the department has found it necessary to add a new section 4-2 to the Child Care Policy Manual titled Tribal IV-E CPS Child Care. The fiscal impact of serving Tribal IV-E children is \$109,000 of total IV-E funds in cooperation with Division 03.

Section 6-2, which relates to Legally Unregistered Providers (LUP), is changed to strike an example that no longer exemplifies the intention of the program that a LUP should register with the DPHHS Quality Assurance Division if the LUP wishes to care for more than two children or all of the children from one family. In addition, the section is changed to update the Fingerprint Process to reject and return to the Early Childhood Services Bureau (ECSB) any fingerprints that are smudged and/or unreadable, and to notify the proper CCR&R that a second set of prints is required. The Department of Justice requires no additional charge for reprocessing a second set of prints. No fiscal impact is anticipated with these changes.

Section 6-5, related to Change Reporting, is changed to add a subsection related to Child Support to require families to report any change in their child support case to the local CCR&R within ten days of the change in order to remain eligible for child care assistance. This change will ensure that families are attempting to receive all income to which the family is entitled. No fiscal impact is anticipated with this change.

Section 6-6, related to Absent Day Policies - Maintaining the Continuity of Care, is revised to allow parents a 30-day grace period when eligibility may be otherwise jeopardized due to a parent's loss of employment in order to provide continuity of care to the children, and to strike all references to the HCS/CC - 012 Request for Grace Period for Child Care Benefits form because now the department has required all changes to a case be reported on form HCS/CC - 016. The section is

also changed to add an additional allowance when a parent takes one child to a medical appointment. In that case, the parent could receive child care for the siblings of the child attending the appointment if it is inappropriate for the siblings to attend the medical appointment. The department believes this relates to the continuity of care and offers the ability to meet the "best interest of the child" as to children who stay at the child care facility while a sibling attends a medical appointment. No fiscal impact is anticipated with these changes.

Section 6-7, related to Invoice and Payment Processes, is revised to add an exception to the subsection entitled Scholarship Will Not Pay Twice.

Registered/licensed child care providers which are a child's primary care provider are allowed to bill for a "Certified Enrollment Day" (CE) when a child is temporarily absent from full-time care in the provider's facility as long as all of the criteria for a CE day are met. The department has determined that in such circumstances, it is also necessary to revise policy and pay for care provided by a Legally Unregistered Provider which provides actual care to the child while the child is sick. The department has determined that this absent day policy will support working parents in maintaining their work schedules. The fiscal impact of this revision will be less than \$1000 because very few cases occur where a child may be authorized with a registered/licensed child care provider as well as a LUP. Section 6-7 is also revised with reference to the subsection related to Unexplained Absences. The department currently requires providers to notify the CCR&R of a child's unexplained absence or irregular attendance after five consecutive days. Many providers, however, do not report these unexplained absences until as much as ten days or longer. The department has determined it necessary that when a provider fails to report to the CCR&R of a child's unexplained absence after the fifth day, then the provider will forfeit their paid ten-day closure notice period. This change will likely save the department money because the department will no longer be responsible for paying a ten-day closure notice period for providers who are not meeting the responsibility of reporting a child's unexplained absence.

Section 6-10, related to Table of Eligibility Related Forms, is changed by striking the use of Forms HCS/CC – 012 Request for Grace Period for Child Care Benefits. The department no longer uses this form, but instead requires all changes to a family's child care case to be reported on another form, HCS/CC – 016 Change Report. With the addition of the Working Caretaker Relative TANF Child Care Program the department has determined it is necessary to add Form HCS/CC – 150 Working Caretaker Relative Child Care Application so working caretaker relatives can be properly referred to the CCR&R for authorization of child care services. There is no calculated fiscal impact to this rule change.

Section 6-13, related to Resources for CCR&R Eligibility Specialists, has been simplified by removing the names and e-mail addresses of staff and agency personnel, and listing only staff and agency positions and phone numbers. Changes in personnel make it difficult to update this section accurately with names of those who fill the specific positions. On page 2 of 22, all staff names and e-mail addresses should be stricken because it is very difficult to keep this section up-to-date. Only

staff positions and phone numbers will be shown. On page 3 of 22, all agency personnel names should be stricken because it is very difficult to keep this section up-to-date. No fiscal impact is associated with this change.

Section 7-5b, related to Higher Education Merit Pay, is changed to clarify which staff at a child care resource and referral agency are eligible to apply for Higher Education Merit Pay. The department has determined it necessary to clarify section 7-5b, page 1 of 7, 4th bullet. The bullet should read: A Montana Child Care Resource and Referral Provider Service staff member is eligible to apply for Higher Education Merit Pay. Current policy reads that a Montana Child Care Resource and Referral agency can apply for these funds. It is the department's intention that only Provider Service staff access this program to complete college coursework in the area of early childhood. There is no calculated fiscal impact associated with this rule change.

Section 7-5c, related to Infant Toddler Merit Pay, is changed to increase the amount of the Infant Toddler Merit Pay Stipend to \$500 for each approved recipient. The Infant Toddler Merit Pay Program is a 60-hour training program. The reason for the change is to align the Infant Toddler Merit Pay with the Merit Pay I Program, which allows a recipient to receive \$500 for 50 hours of training. Previously participants in the Infant Toddler Merit Pay Program were taking more hours of training and receiving less of a stipend than in the Merit Pay I Program. There is no calculated fiscal impact for this rule change; however, fewer participants will be approved for the Infant Toddler Merit Pay Program. The department has determined that fewer participants in this program may lead to fewer certified Infant Toddler caregivers. The department, however, does not have the means to increase this budget.

ARM 37.80.201(4) The department has determined it necessary to add to section (4) of this rule. The new section (4) clarifies that the department determines cooperation with Child Support Enforcement Division (CSED) by maintaining an open case with CSED when a case can be established by CSED or providing all appropriate requested documentation to CSED for them to attempt to open a child support case. There is no calculated fiscal impact associated with this rule change.

ARM 37.80.201(11) The department has determined it necessary to add section (11) to this rule to clarify that a licensed or registered child care provider is not eligible to be reimbursed for child care services provided while a child attends a public or private school, including kindergarten in any circumstance. The department will not pay for care while a child who is of legal school age attends a private or public school or kindergarten, even if the school or kindergarten is licensed or registered with the DPHHS QAD. The department will not pay for a child to be home schooled. There is no calculated fiscal impact associated with this rule change.

ARM 37.80.205(6)(a) The department has determined it necessary to strike this subsection of the rule because they are duplicated in the state child care manual, which is incorporated into ARM by reference pursuant to statute. There is

no calculated fiscal impact associated with this rule change.

ARM 37.80.206(4) This rule requires child care facilities to notify the child care resource and referral agency when a child is absent without explanation for five consecutive working days or lose their right to a paid ten-day closure notice period. The department requires this so the CCR&R can determine whether the family is still in need of child care or has switched to a new provider. The rule is changed to set forth consequences which result if providers fail to report such changes; therefore, not requiring the department to pay for any care from the date the child last attended the facility. There is no calculated fiscal impact associated with this change.

ARM 37.80.601 through 37.80.604 The department has determined it necessary to repeal these rules because they are duplicated in the state child care manual, which is incorporated into ARM by reference pursuant to statute. There is no calculated fiscal impact associated with this rule change.

6. Interested persons may submit comments orally or in writing at the hearing. Written comments may also be submitted to Gwen Knight, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 202951, Helena MT 59620-2951, no later than 5:00 p.m. on December 6, 2007. Comments may also be faxed to (406)444-9744 or e-mailed to dphhslegal@mt.gov. The department maintains lists of persons interested in receiving notice of administrative rule changes. These lists are compiled according to subjects or programs of interest. To be included on such a list, please notify this same person or complete a request form at the hearing.

7. An electronic copy of this proposal notice is available through the Secretary of State's web site at <http://sos.mt.gov/ARM/Register>. The Secretary of State strives to make the electronic copy of this notice conform to the official version of the notice as printed in the Montana Administrative Register, but advises all concerned persons that, in the event of a discrepancy between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered. The web site may be unavailable at times, due to system maintenance or technical problems.

8. The bill sponsor notice requirements of 2-4-302, MCA, do not apply.

9. The Office of Legal Affairs, Department of Public Health and Human Services, has been designated to preside over and conduct the hearing.

/s/ Francis X. Clinch
Rule Reviewer

/s/ John Chappuis for
Director, Public Health and
Human Services

Certified to the Secretary of State October 29, 2007.